# TAX AND FINANCE

# **Rainy Day Fund**

HCR 08-1010 (Postponed Indefinitely)
Saving Money and Restoring Trust

### State Education Funding

HCR 08-1014 (Postponed Indefinitely)
Savings Account for Education

#### State Income Taxes

HB 08-1028 (Enacted)

Extend Alzheimer's Association Fund Checkoff

HB 08-1049 (Enacted)

Extend Child Care Income Tax Credit

HB 08-1127 (Enacted)

Developmentally Disabled Employee Income Tax Credit

HB 08-1245 (Postponed Indefinitely) Net Revenue Reductions

HB 08-1355 (Postponed Indefinitely)

Promotion of Film Production in Colorado

HB 08-1372 (Enacted)
Adult Stem Cell Donation Awareness

SB 08-016 (Enacted)

9Health Fair Voluntary Contribution

HB 08-1033 (Enacted)

Historic Preservation Income Tax Credit

HB 08-1091 (Postponed Indefinitely)
Production of Information to Department
of Revenue

HB 08-1138 (Enacted)

Tax Return Preparers Liability Penalty

HB 08-1324 (Postponed Indefinitely) Income Tax Credit for Volunteer Firefighter

HB 08-1362 (Postponed Indefinitely)
Earned Income Tax Credit

HB 08-1408 (Vetoed)

Real Estate Investment Trusts

**SB 08-157** (Lost)

Modify Colorado Capital Gains Deduction

HB 08-1035 (Enacted)

Military Family Relief Fund Checkoff

HB 08-1110 (Enacted)

Income Tax Deduction for Wildfire Mitigation

HB 08-1241 (Enacted)

Colorado Watershed Protection Fund Checkoff

HB 08-1353 (Enacted)

Verify Conservation Easement Tax Credits

HB 08-1369 (Postponed Indefinitely)
Incentives for Donation of Water Rights

### **Property Taxes**

HB 08-1225 (Enacted)

Business Personal Property Tax Exemption

HCR 08-1003 (Postponed Indefinitely) Senior Property Tax Exemption

Eligibility

HB 08-1413 (Postponed Indefinitely)
Business Personal Property Tax

Exemption

SCR 08-001 (Postponed Indefinitely)
Expand Existing Property Tax

Exemptions

HCR 08-1002 (Postponed Indefinitely)
Senior Property Tax Exemption

Eligibility

#### State Sales Taxes

HB 08-1013 (Enacted)

School-related Sales Tax Exemption

HB 08-1271 (Postponed Indefinitely)
Sales Tax Holiday For School Supplies

HB 08-1261 (Enacted)

Flyaway Sales Tax Exemption For

Aircraft

HB 08-1358 (Enacted)

Parent Teacher Organization & Parent Teacher Association Sales Tax

HB 08-1269 (Enacted)

Incentives for Sale of Beetle Pine

Products

### State Severance Tax and Federal Mineral Leasing Revenue

HB 08-1083 (Enacted)

Mineral Revenue Local Government

Distribution

HB 08-1387 (Enacted)

Low-income Energy Assistance Funding

HJR 08-1042 (Enacted)

Prioritized List for Federal Mineral Lease

Projects

SB 08-218 (Enacted)

Allocation of Federal Mineral Lease

Revenue

HB 08-1084 (Enacted)

Impact Assistance Prepayment Option

HB 08-1398 (Enacted)

Operational Account of Severance Tax

Trust Fund

SB 08-013 (Enacted)

Severance Tax Trust Fund Operational

Account Appropriations

SB 08-226 (Enacted)

Aquatic Nuisance Species Prohibition

HB 08-1346 (Enacted)

Water Conservation Board Construction Fund

HB 08-1405 (Enacted)

Funding for the Colorado Water

Institute

SB 08-071 (Enacted)

Extend Forrest Restoration Pilot

Program

SB 08-233 (Enacted)

Federal Mineral Lease-funded Higher

HB 08-1340 (Postponed Indefinitely)

Colorado Housing Investment Fund

Education Projects

### **Economic Development**

HB 08-1001 (Enacted)

Bioscience Research Grant Program

HB 08-1380 (Enacted)

Method of Attributing Income to

Colorado

HB 08-1088 (Enacted)

Continuous Appropriation for Certain

Cash Funds

HB 08-1415 (Enacted)

Colorado Film Commission Operating

Costs

#### **Miscellaneous Public-Finance Measures**

HB 08-1108 (Enacted)

Increase Funds for Older Colorado Cash

Fund

### Tax and Finance Legislation

The legislature debated a number of tax and finance measures during the 2008 session that continued or built upon policy debate in prior sessions. Two referred measures debated partially resulted from the ongoing discussions regarding the state's budget given the passage of Referendum C in 2005 and the interaction between the TABOR Amendment and Amendment 23. TABOR limits the amount of revenue that the state and tax districts may collect each year. Amendment 23 requires the statewide base per pupil funding and categorical funding to increase by inflation plus 1 percent until FY 2010-11 and by no less than the rate of inflation annually thereafter. Both of these measures can affect the state budget because during economic downturns, as revenue declines, the state is still required to increase funding for K-12 education forcing less available money for other state programs.

The General Assembly also debated other referred measures related to the need for a constitutional rainy day fund, an affordable housing fund, and measures that would have changed the 10-year "owner occupier" provision to allow more seniors to qualify for the homestead exemption.

**Business cycle and economic slowdown.** Given the ongoing economic slowdown in Colorado and the nation, the General Assembly continued to enact measures in 2008 that affected a number of economic development programs in an effort to stimulate Colorado's economy. Similar to past sessions, the legislature adopted state income and sales tax incentives along with other mechanisms to boost the economy. To raise additional money for various programs and state services, as in previous years, the legislature also adopted 62 bills that raise fines and fees \$56.9 million beginning FY 2008-09.

The General Assembly continued its debate on the use of state severance tax revenue to mitigate the impacts of the oil and gas industry's drilling activities on communities in Colorado. Bills related to these debates were mainly driven by the work of the 2007 interim committee to Study the Allocation of Severance Tax and Federal Mineral Lease Revenue. Given the higher forecast for severance tax revenue resulting from higher natural gas prices and growing federal mineral lease revenue from increased drilling activity, the legislature continued to look at measures that would use these funding sources to provide more money to higher education.

Finally, regarding the growing needs of seniors on fixed incomes given the sluggish economy, the General Assembly adopted a measure that provided an additional \$3 million for senior-services.

# **Rainy Day Fund**

The legislature debated **House Concurrent Resolution 08-1010** that would have created a state savings fund (rainy day). The resolution would have been referred to the voters at the November 2008 General Election. The measure did not identify a revenue source for the fund but authorized the General Assembly to appropriate or transfer money into the fund. The resolution specified that for years in which General Fund revenue is insufficient to allow for 6 percent appropriations growth, the legislature, with a two-thirds vote of members of each house, may use money in the fund to reach the allowable 6 percent General Fund growth. The bill was postponed indefinitely by the House Finance Committee.

# **State Education Funding**

House Concurrent Resolution 08-1014, which was postponed indefinitely, would have referred a measure to the voters at the November 2008 General Election to amend two sections of the Colorado Constitution that address K-12 funding. Article IX, Section 17 (known as Amendment 23) requires the statewide base per pupil funding and categorical funding to increase by inflation plus 1 percent until FY 2010-11 and by no less than the rate of inflation annually thereafter. It also requires that General Fund appropriations to school finance grow by at least 5 percent annually through FY 2010-11. The resolution removes both of these inflationary increases beginning with FY 2009-10.

The resolution changed other elements to Amendment 23. It created a new account within the State Education Fund, the State Education Fund Savings Account. This account would have been credited 10 percent of State Education Fund tax revenue, and money in the fund could only be expended upon a two-thirds majority vote of each house of the General Assembly. Secondly, beginning FY 2009-10, General Fund transfers to the State Education Fund would not have been subject to the 6 percent appropriations limit so long as the Senate Bill 97-1 diversion to the Highway Users Tax Fund (HUTF) is fully funded. Finally, beginning in FY 2010-11, the resolution would have credited TABOR refunds to the State Education Fund.

#### **State Income Taxes**

In 2008, the General Assembly debated bills that extended and created new state income tax credits and other proposals that make changes to the state income tax system. The legislature also debated a number of bills that would allow the Department of Revenue more flexibility in its auditing

process and a bill to ensure that taxpayers who donate conservation easements comply with federal and state laws. Conservation easements allow owners to protect property by prohibiting development and preserving the property for recreation, education, habitat, open space, or historical importance. As in previous years, the legislature also debated tax incentives that promoted job growth and legislation that created two new state income tax checkoff programs.

State income tax credits. Under current law, taxpayers can claim a state income tax credit for qualified costs incurred in the preservation of historic properties. The tax credit is available through December 31, 2009. House Bill 08-1033 extends this state historic preservation credit for ten additional years. Thus, the bill allows the credit to be available for tax years 2010 through 2019. The credit is equal to 20 percent of qualified rehabilitation costs capped at \$50,000 per qualified property. The bill was signed into law by the Governor.

Taxpayers, both individual and corporate filers, who contribute money to promote child care in Colorado can claim a state income tax credit equal to 50 percent of the total contribution capped at \$100,000. The credit is currently scheduled to expire January 1, 2010, or after the 2009 tax year. **House Bill 08-1049** extends this state child care contribution credit for ten additional years so that it is available for tax years 2010 through 2019.

**House Bill 08-1127** creates a temporary, non-refundable, three-year state income tax credit for taxpayers who hire individuals with a developmental disability. To qualify for the credit, the taxpayer who hires a qualifying employee, must employ the person at a workplace located in Adams, Arapahoe, El Paso, Jefferson, Logan, Montrose, and Morgan counties. The credit is equal to 50 percent of gross wages paid to the employee in the first three months of continuous employment and 30 percent of gross wages paid in the subsequent nine months of continuous employment. Any unused credits can be carried forward in tax years 2010 and 2011.

In addition to the extension of two credits and creation of a temporary state income tax credit, the legislature debated other measures that either reduced taxes, modified, or created new state income tax credits. These bills were postponed indefinitely and include the following measures:

- **House Bill 08-1245** reduced the state income tax rate and disallowed income tax credits up to a certain amount;
- **House Bill 08-1324** allowed volunteer firefighters in active service who receive 36 hours of training during the year a \$125 state income tax credit;
- **House Bill 08-1355** established a Colorado film production tax credit capped at \$25 million annually that is based upon a production company's total qualified expenditures;
- **House Bill 08-1362** established a temporary earned income tax credit based upon the federal credit; and
- House Bill 08-1369 created an instream flow incentive state income tax credit.

*State income tax deductions.* House Bill 08-1110 creates a temporary, five-year state income tax deduction for 50 percent of a landowner's costs in performing wildfire mitigation measures on the taxpayer's Colorado property. The deduction is capped at the lessor of \$2,500 or the landowner's federal taxable income and limited to one deduction for taxpayers who file a joint return.

Under current law, owners of real property who purchased their property on or after May 9, 1994 can capture a state income tax deduction on a capital gain when they sell the property if it is held for five consecutive years. Owners of real property who purchased the property prior to May 9, 1994 are

not allowed a deduction when the property is sold. **Senate Bill 08-157** would have eliminated the May 9, 1994, date from state law that determines whether a capital gains deduction can be taken on a Colorado asset. This bill was deemed lost in the Senate.

Compliance and accountability. Similar to prior sessions, the 2008 session continued to see the General Assembly debating measures aimed at ensuring taxpayer compliance. The state conservation easement credit continued to be one of the primary drivers behind these measures. Since the credit's inception in 2000, over 250 taxpayers have been audited by the Internal Revenue Service and the Colorado Department of Revenue. The credit's revenue impact since it was enacted in 2000 is nearly \$300 million over a seven-year period.

In a ongoing effort to ensure that taxpayers who donate conservation easements comply with state and federal laws, the General Assembly passed **House Bill 08-1353**. In general, the bill establishes additional requirements for taxpayers to ensure that conservation easements follow federal law and adhere to state guidelines regarding the creation of a donated conservation easement. To assist the Department of Revenue with taxpayer compliance, the bill creates a nine-member oversight commission in the Division of Real Estate to advise the division and the department on the creation of easements regarding conservation values, the capacity of easement holders, and the integrity and accuracy of conservation easement transactions related to the state conservation easement tax credit.

Another bill, **House Bill 08-1138**, is aimed at providing taxpayer (consumer) protection against professional tax return preparers who understate tax liability for a taxpayer. The bill authorizes the Department of Revenue to assess a penalty of \$500 against tax preparers who are in violation of this law.

The General Assembly debated two other bills that give the department more flexibility to improve compliance with Colorado's corporate income tax reporting requirements. One bill, **House Bill 08-1408**, adopted definitions of a real estate investment trust and a captive real estate investment trust established by the Multistate Tax Commission. The bill was vetoed by the Governor. Another bill, **House Bill 08-1091**, that was postponed indefinitely, required that taxpayers with annual gross sales in excess of \$500 million, may not unreasonable withhold documents in response to an initial document request issued by the Department of Revenue during an audit.

Income tax checkoff legislation. Colorado taxpayers can contribute to certain programs through tax "checkoffs" by donating a portion of their income tax refund or by increasing the amount owed on their tax return. There were 14 checkoffs on the 2007 income tax form and current law limits the maximum number of checkoffs to 15 programs. In addition, one checkoff program, the Dropout Prevention Activity Fund voluntary checkoff, sunset and was not extended by the General Assembly. Thus, for 2008 there is room for two additional checkoff programs. The legislature adopted two bills that created two, new checkoff programs on the 2008 state income tax form. In addition to new checkoffs, the legislature extended three checkoffs that were going to sunset. One checkoff that was extended, had its name changed. All of these measures can be found in Table 1.

Table 1: 2008 Legislation Affecting State Income Tax Checkoff Programs

Provisions For Bills That Create New Checkoff Programs		
House Bill 08-1372  Adult Stem Cell  Donation Awareness Checkoff	This bill creates a new voluntary income tax checkoff as a funding mechanism for the Adult Stem Cells Cure Fund. The program's function is to provide money for advancing umbilical cord blood collection for public blood banks. The checkoff will be added to the state income tax form for tax years 2008 through 2010.	
Senate Bill 08-016  9Health Fair Voluntary Contribution Checkoff	This bill creates a new voluntary income tax checkoff as a funding mechanism for the 9Health Fair Fund. The program's function is to provide money for free and low-cost health screening and education through volunteer-run, community-initiated programs. The checkoff will be added to the state income tax form for tax years 2008 through 2010.	
Provisions For Bills That Extend Existing Checkoff Programs		
House Bill 08-1028  Alzheimer's  Association Checkoff	This bill extends the income tax checkoff program that uses donations to fund the Alzheimer's Association Fund. The fund supports individuals and families in caring for persons with the disease by making available a 24-hour help line, education classes, support groups, caregiver respite, and family counseling services in communities throughout Colorado. The checkoff will continue to appear on the 2008 form and each year thereafter through 2010 as long as donations exceed \$75,000 in 2008 and 2009.	
House Bill 08-1035  Military Family Relief Checkoff	This bill extends the income tax checkoff program that uses donations to fund the Military Family Relief Fund. Donations are used for emergency grants for financial hardships to members of the Colorado National Guard or reservists and their families when ordered to active military duty. Grants are also available to active duty military personnel stationed in Colorado and their family members when the active duty military member is deployed to a declared hostile fire zone. The checkoff will continue to appear on the 2008 form and each year thereafter through 2010 as long as donations exceed \$75,000 in 2008 and 2009.	
House Bill 08-1241  Colorado Watershed Protection Checkoff	This bill renames the Colorado Watershed Protection Fund to the Healthy Rivers Fund and extends the checkoff program. Donations are used by the Colorado Water Conservation Board (CWCB) in cooperation with the Water Quality Control Commission (WQCC) to award competitive grants to Colorado residents working toward the restoration and protection of land and natural resources within Colorado watersheds. The checkoff will continue to appear on the 2008 form and each year thereafter through 2010 as long as donations exceed \$75,000 in 2008 and 2009.	

# **Property Taxes**

The legislature debated property tax measures that impact taxpayers who pay business personal property taxes, as well as measures that change the eligibility requirements for the senior homestead exemption.

**Business personal property taxes.** The legislature debated two measures that affect business personal property. Business personal property taxes are levied on any equipment that is used in an income-generating enterprise, including machinery, furniture, and computers, as well as cable, pipelines, utility and phone lines, and similar assets. Prior to 1996, business personal property taxes were levied on real and personal property with a value of more than \$250 and a useful life of more than one year.

In 1996, an effort to reduce the tax on small businesses, a company's personal property was exempted from taxes if the actual value of the property was less than \$2,500 per county. **House Bill 08-1225** raises the personal property tax exemption to \$4,000 in actual value for property tax year 2008, \$5,500 in 2009 and 2010, and to \$7,000 in property tax years 2011 and 2012. Beginning

in property tax year 2015, the amount of the exemption is increased biennially by the consumer price index for the Denver-Boulder-Greeley area.

House Bill 08-1413 would have required that the actual value of business personal property that is fully depreciated, as defined by the Division of Property Taxation, gradually be exempt from property taxes. Under current procedures and in most cases, the actual value of fully depreciated personal property is equal to 15 percent of the new replacement cost of the equipment. Under House Bill 08-1413, in each of the next four property tax years, the actual value of fully depreciated personal property subject to the property tax would have been reduced gradually to 3 percent in 2012. Beginning in 2013, all fully depreciated property would have been exempt from property taxes. This bill was postponed indefinitely.

Senior homestead exemption. Colorado voters approved adding the senior homestead exemption to the state constitution in November 2000. In November of 2006, voters approved a measure that extended the exemption to qualifying disabled veterans. Under the exemption, the first 50 percent of up to \$200,000 of a residential property's market value is exempted from the property tax. During the most recent tax year in 2007 when veterans were first allowed the exemption, 154,132 seniors and 1,224 veterans claimed the exemption, reducing their 2007 property taxes by a total of \$81.0 million. The state reimburses counties from the General Fund for the reduction in property taxes.

Under current law, homeowners age 65 and over must have *lived in the same primary residence* for the immediate prior 10 years to be eligible for the exemption. A senior's surviving spouse retains the exemption under current law. This is generally referred to as the 10-year "owner-occupier" requirement. The General Assembly debated three referred measures that would have changed the 10-year "owner-occupier" requirement. All three measures were postponed indefinitely. Each of these measures would have amended the constitution to allow seniors who previously qualified for and received an exemption to:

- move once within the same county during the ten years preceding the applicable tax year (House Concurrent Resolution 08-1002);
- move during the ten years preceding the applicable tax year (House Concurrent Resolution 08-1003); and
- move once within the state for any reason during the ten years preceding the applicable tax year and additional times if their home is destroyed by a natural disaster or the target of an eminent domain proceeding. The measure also allowed surviving spouses of disabled veterans to retain the homestead exemption (Senate Concurrent Resolution 08-001).

### **State Sales Taxes**

The state of Colorado levies a 2.9 percent tax on retail sales of goods and services (tangible personal property) at the time of the sale. The tax is imposed on the purchase price, unless the item is exempted from tax. Currently, Colorado has over 60 exemptions that include food, prescription drugs, and other goods and services. Many of these exemptions were initially enacted to avoid double taxation, make the tax system less regressive, or comply with changing federal, state, or local government laws. The first exemption was enacted in 1935 and many followed until about 55 were in place through the 1980s. The number of sales and use tax exemptions were not significantly increased

since the late 1990s. During the 2008 session, six bills were enacted that affect sales and use taxes. These bills created new exemptions and modified existing law.

**Exemptions.** Two bills that create new exemptions impact schools and parent teacher organizations. **House Bill 08-1013** provides a sales tax exemption for items sold by schools, parent or teacher organizations, booster clubs, and other groups or clubs whose primary purpose is to support a school activity. The bill also provides cities and counties the option of exempting such sales from taxation. **House Bill 08-1358** makes a technical change that give school associations and parent teacher organizations (PTOs) the same tax status as charitable organizations.

Another bill, **House Bill 08-1269**, creates a new exemption as a tax incentive to fight the pine beetle infestation problem affecting a large portion of the state's forest land. More specifically, this legislation provides a temporary sales and use tax exemption for the sales, storage, and use of wood products. Such products include lumber, furniture, or wood chips, that use wood from salvaged trees killed or infested by mountain pine beetles. The exemption is repealed July 1, 2014.

As a way to retain aircraft manufacturers in the state, the General Assembly enacted **House Bill 08-1261** as an economic incentive. The bill provides a state sales tax exemption for the sale of new or used aircraft in the state to nonresidents who register and use the aircraft outside the state.

The legislature also debated **House Bill 08-1271** that would have allowed retailers to participate in a "sales tax holiday" for two four-day periods in August each year. The bill was postponed indefinitely.

### **State Severance Tax and Federal Mineral Leasing Revenue**

Colorado's severance tax was enacted in 1977 to offset some of the state's lost wealth resulting from mineral extraction activities. The tax is imposed upon the production and extraction of metallic minerals, molybdenum, oil and gas, oil shale, and coal. (At this time, there is no oil shale production in the state.) Another state revenue source related to mineral extraction activities is federal mineral lease (FML) revenue. The state receives a portion of this revenue from the federal government when individuals or companies lease federal lands for mineral development in the state. The following section describes 2008 legislation related to each of these revenue sources.

State severance tax and FML revenue. Revenue from state severance taxes and FML activity is expected to increase significantly in the next few years due to rising prices for natural gas and oil. The price of natural gas is projected to increase substantially in 2008 because of low and declining inventories of natural gas, low imports of liquified natural gas, and continuing global economic growth. Oil prices are driven by global demand and recently hit a record high of nearly \$150 per barrel. Given these increases, severance tax revenue is estimated to more than double from \$172.7 million in FY 2007-08 to \$356.4 million in FY 2008-09. In turn, FML revenue is expected to grow strongly and rise 56.3 percent in FY 2008-09 to \$223.2 million from \$142.8 million in the prior year. For FY 2008-09, total revenue from both sources is estimated at \$579.6 million. Table 2 shows state revenue estimates for these revenue sources for FY 2007-08 through FY 2009-10.

Table 2: Estimated State Severance Tax and Federal Mineral Lease Revenue

Fiscal Year	FY 2007-08	FY 2008-09	FY 2009-10
Severance Tax	\$172.2	\$356.4	\$254.9
Federal Mineral Lease Revenue	\$142.8	\$223.2	\$242.2
Total	\$315.0	\$579.6	\$497.1

Source: June 2008 LCS Economic Forecast.

Severance tax distribution. Severance tax revenues in Colorado are divided equally between the Severance Tax Trust Fund, and the Local Government Severance Tax Fund. Severance taxes deposited in the Severance Tax Trust Fund are again divided equally between the Perpetual Base Account and the Operational Account. The Perpetual Base Account is used for water projects administered by the Colorado Water Conservation Board. The Operational Account is used for programs administered by the Department of Natural Resources.

**Perpetual Base Account**. The Perpetual Base Account is used for water projects administered by the Colorado Water Conservation Board and receives one-half of the severance tax revenue credited to the Severance Tax Trust Fund. Under Colorado law, moneys in the Perpetual Base Account may be used for projects to construct or improve flood control, water supply, hydroelectric energy facilities, and related recreational facilities, excluding domestic water treatment and distribution systems.

*Operational Account*. The remaining half of the severance tax receipts allocated to the Severance Tax Trust Fund are credited to the Operational Account. The Operational Account is used for programs administered by the Department of Natural Resources as follows:

- up to 45 percent of the money may be used for programs or projects authorized by the Colorado Oil and Gas Conservation Commission including the plugging and abandonment of wells, site reclamation, regulatory and environmental programs, and emergencies;
- up to 20 percent of the money may be used for programs within the Colorado Geological Survey;
- up to 30 percent of the money may be used for programs within the Division of Reclamation, Mining and Safety; and
- up to 5 percent of the money may be used for programs within the Colorado Water Conservation Board that promote sound natural resource planning, management, and development related to minerals, energy, geology, and water.<sup>1</sup>

Under current law, the Colorado Oil and Gas Conservation Commission, the Colorado Geological Survey, the Division of Reclamation, Mining and Safety, and the Colorado Water Conservation Board all receive money from the operational account to cover their operating expenses. During the 2008 session, the legislature adopted bills that transfer money from the Operational Account to water and agriculture programs for forestry grants, bark beetle mitigation, and Tamarisk control. Tamarisk, a flowery plant that grows along creeks and rivers, can consume up to 200 gallons of water per day and is a threat to Colorado's water supplies. Other programs included clean energy development, species conservation, and low-income energy assistance through the Colorado LEAP

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<sup>&</sup>lt;sup>1</sup> Section 39-29-109 (1) (c), C.R.S.

program. Table 3 summarizes the revenue impact of this 2008 legislation that affects the Operational Account of the Severance Tax Trust Fund.

Table 3: Impact on Operational Account of the Severance Tax Trust Fund

Bill/ Short Title	Description	FY 2008-09 Impact	FY 2009-10 Impact
HB 08-1346  Water Conservation Board Construction Fund	This bill funds a variety of water projects through loans and direct appropriations including \$1,000,000 to finance a Tamarisk control grant program.	\$1,000,000	\$0
HB 08-1387  Low-income Energy Assistance Funding	This bill continues funding through FY 2011-12 to the Department of Human Services for the Low-Income Energy Assistance Program (LEAP), as well as to the Governor's Energy Office for energy bill payment assistance for low-income households, and for home energy efficiency improvements.	\$13,000,000	\$13,000,000
HB 08-1405 Funding for the Colorado Water Institute	This bill transfers \$500,000 to the Water Research Fund for the Colorado Water Institute in FY 2008-09.	\$500,000	\$0
SB 08-013  Severance Tax Trust Fund Operational Account Appropriations	This bill was recommended by the Interim Committee to Study the Allocation of Severance Tax and Federal Mineral Lease Revenue. The bill changes permissible appropriations from the operational account to the Department of Natural Resources. The bill reduces the share of the account that may be used to fund programs within the Oil and Gas Conservation Commission (COGCC) from 45 to 40 percent; reduces the share of the account that may be used to fund programs within the Division of Reclamation, Mining and Safety (DRMS) from 30 to 25 percent; allows appropriations of up to 5 percent of the account for programs within the Division of Parks and Outdoor Recreation to operate, maintain or improve state parks in regions of the state where production activity is occurring; and exempts appropriations made to the Division of Wildlife from the two-year reserve requirement of the Operational Account.	\$3,503,985	\$2,803,347
SB 08-071  Extend Forest Restoration Pilot Program	This bill extends the repeal date for the Forest Restoration Pilot Program and its related technical advisory panel from July 1, 2008, to July 1, 2012. The General Assembly created the Forest Restoration Pilot Program through HB 07-1130 as part of the Colorado Forest Restoration Act. It directed the Colorado State Forest Service and the Division of Forestry, Department of Natural Resources, to solicit proposals for experimental forest restoration projects that protect water supplies.	\$1,000,000	\$1,000,000
SB 08-226  Aquatic Nuisance Species Prohibition	This bill establishes aquatic nuisance species laws to prevent, control, contain, monitor, and eradicate aquatic nuisance species-both wildlife and plants, and from state waters.	\$5,955,591	\$4,006,005
Total Transfers from the Fund	Operational Account of the Severance Tax Trust	\$24,961,584	\$20,811,361

Table 4 provides information on other 2008 severance tax legislation that affects the severance tax distribution to local governments, the impact assistance tax credit, and the operational account. The impact assistance tax credit helps address the needs of local communities impacted by mineral development and uses money that the Department of Local Affairs (DOLA) would otherwise use for grant programs.

Table 4: Other 2008 Severance Tax Legislation

Bill/ Short Title	Description
HB 08-1083  Mineral Revenue Local Government Distribution	This bill changes the formula for the direct distribution of severance tax revenue to local governments. Currently, allocation of these moneys is based solely on employee residence, and is done on a facility-by-facility basis. This bill changes the allocation formula to one based on weighted measures of the following three factors:  • the proportion of industry employees within a given county to the total number of employees residing in the state;  • the proportion of mine and well permits issued within a given county to the total number of such permits issued within the state; and  • the proportion of the overall mineral production within the county to the overall mineral production within the state.
HB 08-1084 Impact Assistance Payment Option	This bill requires the departments of Local Affairs, Natural Resources, Revenue, the Colorado Municipal League, and Colorado Counties Inc., to work with the State Energy Impact Advisory Committee, representatives of the energy and mineral industries, and other stakeholders to determine how best to improve the existing impact assistance tax credit.
HB 08-1398  Operational Account of Severance Tax Trust Fund	This bill changes how the reserve requirement is calculated for the operational account, when specific transfers from the account will occur, and how transfers will be reduced to maintain the reserve requirement when insufficient revenue is available based on the Legislative Council Staff forecast.

When individuals or companies lease federal lands for mineral development, the federal government collects revenue from those leases, which are partially shared with the states in which the production occurred. Three forms of revenue are collected by the federal government. Lease holders competitively bid and initially pay a "bonus" to use the land. Lease holders also pay rent for the right to develop mineral production on these lands. Also, if minerals are extracted and sold, the federal government receives a royalty from the production. The preceding Table 2 on severance tax and FML revenue includes bonus payments as well as royalties and rents.

The FML revenue the state receives from the federal government is currently allocated according to a formula in Section 34-63-102, C.R.S. This section states that the money is to be used by state agencies, public schools, and local governments for the planning, construction, and maintenance of public facilities and public services, with priority given to public schools and local governments socially or economically impacted by the mineral extraction industry on federal lands. Table 5 provides information on bills that affect how the FML revenue in Table 2 is spent.

Table 5: 2008 Legislation Affecting Federal Mineral Lease Revenue

Bill/Short Title	Description	FY 2008-09 FY 2009-10 Change in Change in Spending	
SB 08-218  Allocation of Federal Mineral Lease Revenues	This bill changes the way that the state spends its portion of federal mineral lease (FML) revenue. Beginning July 1, 2008, the bill segregates FML bonus payment revenue and specifies the reallocation of non-bonus (rent and royalty) FML revenue. Net expenditures from the Mineral Leasing Fund are \$21.6 million in FY 2008-09 and \$54.5 million in FY 2009-10 and affect the State Education Fund, the CWCB Construction Fund, the Local Government Mineral Impact Fund, the Higher Education FML Revenues Fund, and the Higher Education Maintenance and Reserve Fund.	\$21,600,000 \$54,500,000	
SB 08 233  FML-Funded Higher Education Projects and	This bill and resolution establish a process for identifying higher education capital construction projects that are to be funded from federal mineral lease revenue. The resolution specifies prioritized projects that the State Treasurer can enter into lease purchase agreements to complete.	N/A	
HJR 08-1042  Prioritized List for Federal Mineral Lease Projects	The state contribution to these institutions includes the following:  - University of Northern Colorado \$11,591,235  - Colorado Northwestern Community College \$21,324,383  - Colorado State University - Pueblo \$22,005,202  - Colorado School of Mines \$6,748,298  - Colorado State University \$2,000,000		

# **Economic Development**

In 2008, the legislature debated measures to stimulate Colorado's economy by providing incentives to film-makers and the biofuel industry. The legislature also adopted bills that continue funding for certain economic development programs and change the way corporations apportion income for purposes of paying corporate income taxes. Also debated, was a measure that would provide more affordable housing to low income households. The measure was intended to provide grants and loans to regions in Colorado that have few opportunities for moderately-priced housing to allow more lower income households to live closer to their employment.

Incentives for making films in Colorado. In 2006, the legislature created performance-based incentives for the Motion Picture Industry to induce film-makers to make movies in Colorado. These incentives were in the form of cash rebates first authorized in House Bill 06-1362 and House Bill 06-1201. Initially, this legislation provided for an annual transfer of \$600,000 from the Limited Gaming Fund to the Film Incentives Cash Fund. In a continuing effort to further attract film production to Colorado, House Bill 08-1415 changed the way this \$600,000 can be spent by specifying that, in FY 2008-09, \$300,000 of the \$600,000 will be spent by the Colorado Film Commission on operating expenses. The intent of the transfer was aimed at giving the commission flexibility to market Colorado as a destination for film production.

**Biofuel research.** Another measure promoted bioscience technologies for agriculture and biofuel research. **House Bill 08-1001** repeals provisions concerning grants to federal small business innovation research programs, small business technology transfer programs, and biofuel research. Among the bill's many provisions, **House Bill 08-1001** adds early-stage bioscience companies as beneficiaries for program grants. To be eligible for moneys, such companies must have a licensed technology from a Colorado research institution of higher education.

Funding for economic development programs. Under current law, the legislature annually appropriates revenue for economic development to the New Jobs Incentives Cash Fund, the Film Incentives Cash Fund, the State Council on the Arts Cash Fund, and the Colorado Travel and Tourism Promotion Fund. House Bill 08-1088 provides the criteria for monies not spent from any appropriation in prior years to roll-over to future years whenever it takes additional time to complete a given economic development contract or obligation.

**Change in apportionment of income.** House Bill 08-1380 changes the method by which net income is apportioned to Colorado for the purpose of determining Colorado taxable income. Under current law, a multistate corporation or partnership is generally allowed to apportion income using a two-factor method:

- gross receipts assignable to Colorado as a fraction of the company's total receipts; and
- the value of real and tangible property located in Colorado as a fraction of the company's total property value.

**House Bill 08-1380** uses a three-factor method that allows a company to apportion its income based on the average of the following factors:

- total sales in Colorado as a fraction of the company's total sales;
- the value of real and tangible property located in Colorado as a fraction of the company's total property value; and
- the compensation paid to employees in Colorado as a fraction of the company's total compensation.

In general, the primary beneficiaries of this change are expected to be Colorado-based corporations that have a significant percentage of property and payroll in the state, but a relatively *smaller percentage of sales in the state*. However, companies without a sizable fraction of property or payroll in Colorado, but a relatively larger share of sales in the state are expected to pay additional income taxes.

Affordable housing. House Bill 08-1340 would have referred a measure to voters in November 2008 to approve an increase in the county documentary fee on real estate transactions. Documentary fees are currently used to defray the costs incurred by county administrators for filing, recording, and releasing title or lien on real property when a property is sold. The purpose of imposing a documentary fee on the conveyance of real property is to develop a continuing, county-by-county record to compare properties for assessment purposes. House Bill 08-1340 proposed that the documentary fee for residential real estate transactions be increased from one cent to five cents and for commercial, vacant land, and industrial classes of property, increased from one cent to two cents. The additional money would have been used for affordable housing for low income households and was estimated to generate about \$24.7 million in the first full fiscal year.

### **Miscellaneous Public-Finance Measures**

The legislature continued to debate measures that address the growing needs of seniors on fixed incomes given the sluggish economy. Last session, House Bill 07-1100 increased funding to the Older Coloradans Cash Fund from \$3 million to \$5 million in FY 2007-08. The Older Coloradans Cash Fund was established in 2000 by House Bill 00-1072 and is administered by 16 statewide Area Agencies on Aging. Program services include personal care, assisted transportation, congregate meals, home-delivered meals, homemaker services, adult day care, transportation, legal assistance, and general information and assistance. During the 2008 session, the legislature adopted **House Bill 08-1108** to further increase funding for senior programs. Beginning with FY 2008-09, the bill increases funding to the Older Coloradans Cash Fund from receipts collected from the state sales and use tax from \$5 million to \$8 million annually.